IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 362 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Applicant(s)
Versus
PATEL RAMESHBHAI HARAKHJIBHAI KAJIYA & 2 - Respondent(s)

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Appearance :
Mr. Mukesh A.Patel, A.P.P. for Applicant-State.
RULE SERVED for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 03/07/2007

ORAL JUDGMENT

1. This Criminal Revision Application is preferred by the State of Gujarat against the

order dated 6-4-2004 passed by the learned Addl.Sessions Judge (Special Judge) Dhrangadhra, in Special Case no.7/2003 whereby the discharge application filed by the present respondents-original accused came to be allowed.

2. It is the case of the applicant-State of Gujarat that the Taluka Development Officer lodged a complaint against the present opponents for the offences punishable under Sections 409, 471, 477, 120B and 114 of the Indian Penal Code as also under Section 5(2) of the Prevention of Corruption Act which was registered as CR no.I 239/1993 at Halvad Police Station. According to the applicant-State in the year 1982 there was scarcity on account of droughts and the Government commenced drought relief work at different places of Halvad Taluka. It is further the case of the applicant-State that in Village Kidi, the relief work was carried out from 1-3-1982 to 12-09-1982 and during that period Magan Gora(respondent no.3) was working as muster clerk, Govind Veera(respondent no.2) was doing

the work of roll call of labourers and Patel Rameshbhai Harakhjibhai Kajiya (respondent no.1) was working as a Supervisor in the office of the District Panchayat at the relevant time. According to the applicant, the present respondents nos.1, 2 and 3 in collusion with each other had made entries of false names and made wrongful payment to the labourers whose names were falsely shown, and thereby, misappropriated the Government funds as the payments were made from the public exchequer.

3. On the basis of the aforesaid complaint, upon completion of investigation chargesheet came to be filed against all the three accused persons and the case was registered as Special Case no.7/2003 in the Court of the learned Additional Sessions Judge(Special Judge), Dhangadhra. Thereupon, the respondent no.1-Patel Rameshbhai Harjibhai Kajiya preferred application Exh.13 in Special Case no.7/2003 under Section 227 of the Criminal Procedure Code seeking discharge in respect of the charges levelled against him

mainly on the grounds that he was not serving as a Supervisor during the period from 4th October to 12th October 1982 and as such there was no question of making false payment during that period as alleged in the complaint. According to him, even otherwise, whatever payment was made, the same was made in the presence of Sarpanch. According to the respondent no.1 no sanction was obtained for prosecuting him as required under Section 197 of the Criminal Procedure Code, which is mandatory, and therefore also, he should be discharged from the charges levelled against him. The learned Additional Sessions Judge after hearing the learned Counsel for the respondent no.1-accused as also the learned A.P.P. allowed the application for discharge of the respondent no.1 which is the subject matter of challenge in the present Criminal Revision Application.

4 Heard the learned A.P.P. Mr.Mukesh A. Patel, for the applicant-State. Though rule was served none remained present on behalf of the respondent.

5. The learned A.P.P. has assailed the order passed by the learned Magistrate on the ground that the respondents are directly involved in the misappropriation of Government money. It is urged by the learned A.P.P. that the order passed by the learned Addl.Sessions Judge allowing the discharge application of the respondent no.1 be quashed and set aside and the Criminal Revision application be allowed.

6. This Court has very carefully examined the papers of investigation. No doubt the petitioner was appointed and posted as Supervisor in the office of the District Panchayat, Surendrangar, on 4-10-1982, and hence, he was not working as such in the said office till 3-10-1982, but it becomes crystal clear from the papers of investigation that the payments are made after 3-10-1982. Admittedly from 4th October, 1982, the respondent no.1-Ramesh bhai Harakhjibhai Kajiya was disccharging his duties as Supervisor in the Office of the District Panchayat. The papers of

investigation show that the respondent no.1 has put his signature on the payment bill, and thereafter, the payments were made and as such it can be said that when the payments were made the respondent no.1 was working in the capacity of a Supervisor and when he has put his signature on the payment bill, prima facie, the involvement of the accused-Rameshchandra Harakhjibhai Kajiya in the commission of the crime is made out, and hence it can be said that there is sufficient material for initiating criminal proceedings against the respondent no.1. Similarly, the involvement of the respondents nos.2 and 3 in the commission of the crime in question is also made out, and hence, there is sufficient ground for initiating criminal proceedings against all the accused.

7. It is settled proposition of law that at the stage of framing charge this Court has only to see whether there is sufficient evidence to initiate trial or not, and not the question whether the accused would be convicted or whether

the trial would end in conviction of the accused. In that view of the matter, the learned Additional Sessions Judge (Special Judge), Dhrangadhra, has committed grave error in allowing the discharge application of the respondent no.1-accused. I am fortified in my view by the decision rendered in the case of State of Bihar v. Ramesh Singh ((1977) 4 SCC 39 wherein it was observed that: " Considering the scope of Section 227 and 228 of the Code, it was held that at the stage of framing of charge, it is not obligatory for the judge to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion, at the initial stage of framing of charge, is sufficient to frame the charge and in that event it is not open to say that there is no sufficient ground for proceeding against the accused."

8. The ground that sanction to prosecute the accused had not been obtained under Section 197 of the Criminal Procedure Code cannot also be accepted. Merely because the sanction under Section 197 is not produced alongwith the papers of charge-sheet, it cannot be said that sanction is not accorded or denied by the competent authority. Certainly, it is the duty of the prosecution to obtain sanction for initiating criminal proceedings against a public servant, but the prosecution can very well produce such sanction during the trial and the accused would be at liberty to raise this question during the trial.

9. In the instant case, for the reasons stated above, there is sufficent ground for proceeding against the respondents nos.1, 2 and 3 and therefore, I am constrained to hold that the learned trial Court has committed grave error in discharging the respondent no.1-accused.

10. In the result, this Criminal Revision Application is allowed. The order dated 6-4-2004 passed by the learned Addl. Sessions Judge (Special Judge), Dhangadhra in Special Case no.7/2003 allowing the discharge application of the respondent no.1-accused is hereby quashed and set aside. Rule is made absolute.

(M.D.Shah,J.)

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